



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,037	12/19/2001	Maurice O. Hevey	3099.12US02	5829

24113 7590 07/20/2004

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER

TRAN, SUSAN T

ART UNIT PAPER NUMBER

1615

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/025,037	HEVEY, MAURICE O.	
	Examiner	Art Unit	
	Susan T. Tran	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of applicant's Notice of Appeal filed 10/27/03 and Appeal Brief filed 12/29/03.

The finality is withdrawn in view of the newly discovered references to Greenberg et al. and Derrieu et al. Rejections based on the newly cited references follow.

Claims 1-6 are directed to a viscous carrier comprising vegetable oil, fish oil, and antioxidant.

Claims 7-18 are directed to a food supplement in a viscous carrier comprising vegetable oil, fish oil, antioxidant, and probiotic ingredients, which can be any agents recited in claim 13.

Claims 19-25 are directed to a method for delivering the carrier of claims 7-18.

Claim Objections

Claim 15 is objected to because of the following informalities:

The dependency of claim 15 appears to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1615

Claims 19-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19 recites "[A] method for delivering probiotic substances". However, the method comprising the steps of heating, mixing, and cooling. It appears that the claimed is directed to a method for making probiotic substances. For examining purpose, the examiner interpreted the claims as a method of delivering the probiotic substances. Further clarification is suggested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenberg et al. US 3,745,023.

Greenberg discloses an appetite enhancing composition comprising 25-72 parts by weight of animal fat extracts, 25-72 parts by weight of vegetable oil, 2-20 parts by weight of fish oil, and 0.1-0.5 part by weight of flavor and antioxidants (column 4, lines 5-15). Vegetable oil is selected from corn, peanut, cottonseed, soybean, safflower, and other edible vegetable oils of commerce (column 2, lines 36-42).

Art Unit: 1615

Claims 1-3, 6-9, 12 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schroeder et al. US 4,913,921.

Schroeder discloses a food product comprising 10-25% fish oil derived from salmon, sardine, cod liver, and menhaden oil (column 3, lines 13-61). The composition further comprising vegetable oil, antioxidant and flavor masking agents (column 5, lines 29 through column 6, lines 1-63). Schroeder also teaches the composition additionally comprises vitamins in an amount from about 0.1-4% (column 6, lines 64 through column 7, lines 1-3). The vegetable oil is selected from peanut, soybean, coconut, palm, cottonseed, and sunflower oil (column 5, lines 8-12, and examples). Example 7, discloses 0.27% antioxidant, 23.5% fish oil, and 56.4245% Durkex 25 (soybean oil).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 6-8, 12-16 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derrieu et al. US 6,010,720, in view of Greenberg et al. US 3,745,023.

Derrieu teaches a composition comprising from 35-60% of lipid substances, between 5-45% of at least one palatable substances, and between 0-50% of another suitable additional ingredient (column 2, lines 55-67). The composition is for oral administration of medicaments, such as vitamins, nutritional substances, vaccines and the like (column 1, lines 1-8). The lipid substances are mixtures of vegetable, fish, mineral, semi-synthetic and synthetic oils (column 3, lines 49-61). The palatable substances can be flavoring agents (column 3, lines 65-68). Examples 1 and 5 show the use of vitamins A, D, Bs, and E (tocopherol). Derrieu also teaches the method for preparing the composition comprises melting the lipid substances, mixing the polymer at the same temperature, cooling the mixtures, and adding bioactive substance and the remainder of the composition (column 4, lines 39-63).

Derrieu does not teach the combination of vegetable oil and fish oil, however, Derrieus' examples show different mixtures of oils, for example fish oil and paraffin.

Greenberg teaches an appetite enhancing composition comprising 25-72 parts by weight of animal fat extracts, 25-72 parts by weight of vegetable oil, 2-20 parts by weight of fish oil, and 0.1-0.5 part by weight of flavor and antioxidants (column 4, lines 5-15). Vegetable oil is selected from corn, peanut, cottonseed, soybean, safflower, and other edible vegetable oils of commerce (column 2, lines 36-42). Thus, it would have been obvious for one of ordinary skill in the art to modify the palatable composition of

Art Unit: 1615

Derrieu using the mixture of vegetable oil and fish oil in view of the teachings of Greenberg, because the references teach the advantageous results in the use of lipid substances, such as vegetable and marine oils (Derrieu at column 2, lines 21-43; and Greenberg at column 2, lines 15-64). The expected result would be a stable composition suitable for oral administration of medicaments and nutritional substances to animal such as mammals.

Claims 4, 5, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derrieu et al. US 6,010,720 and Greenberg et al. US 3,745,023, in view of Desai et al. US 4,867,986.

Derrieu and Greenberg are relied upon for the reasons stated above. The references do not teach the specific antioxidant, such as β -, α -tocopherol. However, tocopherol is known in pharmaceutical art as an antioxidant. To be more significant, Desai is cited solely for the teaching of antioxidant including d- α -tocopherol and the like (column 5, lines 40-52). Thus, it would have been obvious for one of ordinary skill in the art to use tocopherol as an antioxidant in the composition of Derrieu and Greenberg with the expectation of obtaining a stable composition comprising mixtures of vegetable oil and marine oil.

Claims 17, 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derrieu et al. US 6,010,720 and Greenberg et al. US 3,745,023, in view of Gehrman et al. US 4,518,696.

Art Unit: 1615

Derrieu and Greenberg are relied upon for the reasons stated above. The references do not teach the claimed probiotic substances, such as microorganisms, however, Derrieu teaches the use of medicaments, vitamins, trace elements, amino acids, nutritional substances, vaccines and the like (column 1, lines 1-8). Gehrman teaches a composition comprising various species of lactobacillus suspended in sunflower oil (abstract, and column 1, lines 55-63). Some or all of the bacteria are potentially useful for probiotic administration to domestic animals (column 2, lines 7-15). Thus, it would have been obvious for one of ordinary skill in the art to use the microorganism in view of the teaching of Gehrman as a medicament, vaccines or the like in the composition of Derrieu and Greenberg with the expectation of obtaining a stable composition comprising mixtures of vegetable oil and marine oil.

Pertinent Arts

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barcelon et al., Chang et al., Lee et al., Emoto, Sakai et al., Bosch et al., and Villamar et al. Are cited as of interest for the teachings of oils and fats compositions.


Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan T. Tran whose telephone number is (571) 272-0606. The examiner can normally be reached on M-R from 6:00 am to 4:30 pm.

Art Unit: 1615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached at (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNICAL CENTER 1600